

**AGREEMENT BETWEEN RESPONSIBLE PARTY AND ENVIRONMENTAL
CONSULTANT
ON THE BASIS OF A STIPULATED NOT TO EXCEED PRICE**

THIS AGREEMENT is dated as of the _____ day of _____, 200_ by and between

_____ (hereinafter called RESPONSIBLE PARTY) and

_____ (hereinafter called ENVIRONMENTAL CONSULTANT).

RESPONSIBLE PARTY and ENVIRONMENTAL CONSULTANT, in consideration of the mutual covenants hereinafter set forth, agree as follows:

1. **REMEDIAL ACTIVITIES.**

1.01. ENVIRONMENTAL CONSULTANT shall complete all Remedial Activities as specified or indicated in the Contract Documents (see section 7.01) sufficient to obtain the remedial project Completion as defined in the remediation bid provided to the Department of Commerce by the ENVIRONMENTAL CONSULTANT and included herein. The Remedial Activities do not include any additional investigation; remedial activities do include providing, furnishing and conducting such Design, construction, start up, operation, close out, and proper abandonment all as necessary to achieve the completion described in the remediation bid and in sub 2.

2. **COMPLETION.**

2.01. The remedial project Completion to be achieved by ENVIRONMENTAL CONSULTANT is generally described as follows:

3. **CONTRACT PRICE FOR CONDUCT OF REMEDIAL ACTIVITIES TO
ACHIEVE COMPLETION.**

3.01 RESPONSIBLE PARTY shall pay ENVIRONMENTAL CONSULTANT an hourly rate for professional consulting services. In addition, the RESPONSIBLE PARTY shall pay costs of commodity services contracted by RESPONSIBLE PARTY which are necessary to

bring the site to COMPLETION. The total cost to achieve the Completion of Remedial Activities will not exceed the following sum:

A. For all PECFA eligible Remedial Activities (not including interest costs) to achieve COMPLETION \$ _____. Any costs, which would otherwise be PECFA eligible, beyond this amount are the responsibility of the ENVIRONMENTAL CONSULTANT unless identified within this agreement as an addition agreed to by RESPONSIBLE PARTY and ENVIRONMENTAL CONSULTANT or unless a condition is found during the conduct of remedial activities that could not have been known to the ENVIRONMENTAL CONSULTANT at the time that it provided its bid based upon the provided site investigation, and the condition increases the total cost to COMPLETION.

B. Under s. 101.143 , Wis. Stats., Petroleum Storage Remedial Action, Financial Assistance (PECFA) and Comm 47, Wis. Admin. Code, all costs to be performed as identified in paragraph 3.01 A. are eligible for reimbursement, pursuant to s. 101.143(4)(b) and the Comm 47 Remedial Alternative Response letter dated _____ identifying the lowest responsible bidder and including the ENVIRONMENTAL CONSULTANT bid response for bid number _____, both of which are attached and fully incorporated into this agreement. ENVIRONMENTAL CONSULTANT shall use the Standard of Care defined in paragraph 12.01 A to maintain the eligibility for reimbursement under PECFA of costs for services performed pursuant to this agreement. ENVIRONMENTAL CONSULTANT shall not be responsible for costs or portions of costs that are deemed to be not reimbursable under PECFA due to changes in s. 101.143, Wis. Stats., or Comm 47, Wis. Admin. Code which occur subsequent to the date on which the services are performed.

C. In no case will the ENVIRONMENTAL CONSULTANT be responsible for the deductible assessed to the RESPONSIBLE PARTY by PECFA.

D. Due to Differing Conditions as defined in paragraphs 10.02 or 10.03, it may be necessary for ENVIRONMENTAL CONSULTANT to perform additional services not identified in paragraph 3.01 A and at costs which exceed those identified therein. Such additional services shall only be performed or such costs shall only be incurred pursuant to written authorization as set forth in paragraphs 3.01 E and 10.02 or 10.03. RESPONSIBLE PARTY understands that such additional services or costs may not be eligible for reimbursement under PECFA and solely a cost to the RESPONSIBLE PARTY.

E. The following additions have been agreed to by the RESPONSIBLE PARTY and ENVIRONMENTAL CONSULTANT and are in addition to the cost to achieve COMPLETION.

Item	Cost Addition
_____	\$ _____

Date____Signature RESPONSIBLE PARTY Date____Signature of Consultant

_____ \$ _____

Date____Signature RESPONSIBLE PARTY Date____Signature of Consultant

_____ \$ _____

Date____Signature RESPONSIBLE PARTY Date____Signature of Consultant

_____ \$ _____

Date____Signature RESPONSIBLE PARTY Date____Signature of Consultant

Total additional cost \$ _____

[Attach additional pages if required]

If during the life of the contract, further additions are agreed to by the RESPONSIBLE PARTY and ENVIRONMENTAL CONSULTANT, no cost is reimbursable or chargeable to the RESPONSIBLE PARTY before the date of agreement and modification of this contract.

4. **PAYMENT PROCEDURES.**

4.01. ENVIRONMENTAL CONSULTANT shall submit and RESPONSIBLE PARTY will process Applications for Payment in accordance with the provisions of this Agreement.

 A. *Progress Payments.* RESPONSIBLE PARTY shall make progress payments on account of the Contract Price on the basis of ENVIRONMENTAL CONSULTANT's Applications for Payment, on or before the _____ day of each month during performance of the Remedial Activities as provided herein.

 B. *Final Payment.* Upon COMPLETION, RESPONSIBLE PARTY shall pay the remainder of the ENVIRONMENTAL CONSULTANT's actual charges and incurred costs.

5. **INTEREST.**

5.01. All monies not paid to the ENVIRONMENTAL CONSULTANT when due shall bear interest at the rate of _____ percent per annum.

6. **ENVIRONMENTAL CONSULTANT REPRESENTATIONS.**

6.01. ENVIRONMENTAL CONSULTANT makes the following representations:

A. ENVIRONMENTAL CONSULTANT has examined and carefully studied the Contract Documents (including the Addenda) and the other related data identified in the Request for Proposals.

B. ENVIRONMENTAL CONSULTANT has visited the Site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Remedial Activities.

C. ENVIRONMENTAL CONSULTANT is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Remedial Activities.

D. ENVIRONMENTAL CONSULTANT, prior to submitting its successful bid to bring the site to COMPLETION, carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site which have been identified or made available by the Department of Commerce as part of the Department of Commerce bid process.

E. ENVIRONMENTAL CONSULTANT has given RESPONSIBLE PARTY written notice of all conflicts, errors, ambiguities or discrepancies that ENVIRONMENTAL CONSULTANT has discovered in the Contract Documents and the written resolution thereof by RESPONSIBLE PARTY is acceptable to ENVIRONMENTAL CONSULTANT, and the Contract Documents are generally sufficient to indicate and convey understanding of the terms and conditions for performance and furnishing of the Work.

7. **CONTRACT DOCUMENTS.**

7.01. The Contract Documents which comprise the entire agreement between RESPONSIBLE PARTY and ENVIRONMENTAL CONSULTANT concerning the Remedial Activities consist of the following:

A. This Agreement (pages 1 to _____, inclusive).

B. Exhibits to this Agreement. (pages ____ to ____ inclusive.)

C. Environmental reports prepared on the site and made available to the ENVIRONMENTAL CONSULTANT during the Department of Commerce competitive bid process.

D. Department of Commerce bid documents including the Site Specific Bid Specification Requirements.

E. ENVIRONMENTAL CONSULTANT'S Bid Document(s) and Public Bidding Response.

F. Addenda numbers _____ through _____ inclusive.

G. Documentation submitted by ENVIRONMENTAL CONSULTANT prior to Notice of Award (pages _____ to _____, inclusive).

H. The following that may be delivered, prepared, or issued after the Effective Date of this Agreement and are not attached hereto.

1. All written Amendments and other documents amending, modifying or supplementing the Contract Documents.

2. Specifications prepared by ENVIRONMENTAL CONSULTANT.

3. Drawings prepared by ENVIRONMENTAL CONSULTANT.

7.02. The documents listed in Paragraph 7.01 above are attached to this Agreement (except as expressly noted otherwise above).

7.03. There are no Contract Documents other than those listed above in this Section 7.

7.04. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

7.05. RESPONSIBLE PARTY and ENVIRONMENTAL CONSULTANT each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

7.06. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon RESPONSIBLE PARTY and ENVIRONMENTAL CONSULTANT, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

8. **PRELIMINARY MATTERS.**

8.01 Starting the Remedial Activities.

A. ENVIRONMENTAL CONSULTANT shall be allowed to access the site and start to perform the Remedial Activities on _____.

8.02 Before Starting Remedial Activities

A. Before any Work is started, ENVIRONMENTAL CONSULTANT and RESPONSIBLE PARTY shall each deliver to the other, with copies to each additional insured identified in this Agreement, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which ENVIRONMENTAL CONSULTANT and RESPONSIBLE PARTY respectively are required to purchase and maintain in accordance with this Agreement or rules of the Department of Commerce's PECFA Program.

9. **CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE.**

9.01 Intent

A. The Contract Documents comprise the entire agreement between RESPONSIBLE PARTY and ENVIRONMENTAL CONSULTANT concerning the Remedial Activities. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the laws of the State of Wisconsin.

B. It is the intent of the Contract Documents to describe the complete remediation project, initially identified in the ENVIRONMENTAL CONSULTANT'S bid, to be designed and constructed or installed in accordance with the Contract Documents. Any Remedial Activities, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically described herein. When words or phrases which have a well-known technical or industry or trade meaning are used to describe work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning.

9.02 References

A. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or Laws or Regulations in effect on the day of the Department of Commerce's bid closing except as may be otherwise specifically stated in the Contract Documents.

B. Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and;

1. the provisions of any such standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

2. the provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

C. No provision of any such standard, specification, manual, code or instruction shall be effective to change the duties and responsibilities of RESPONSIBLE PARTY, ENVIRONMENTAL CONSULTANT or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to RESPONSIBLE PARTY any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with any provision of the Contract Documents.

9.03 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof by execution of a written Change Order and inclusion in 3.01.

9.04 Reuse of Documents

A. All documents including Drawings and Specifications prepared or furnished by ENVIRONMENTAL CONSULTANT pursuant to this Agreement are instruments of service in respect of the remediation project and ENVIRONMENTAL CONSULTANT shall retain an ownership and property interest therein whether or not the remediation project is completed. RESPONSIBLE PARTY may make and retain copies for information and reference in connection with the use and occupancy of the remediation project by RESPONSIBLE PARTY and others; however, such documents are not intended or represented to be suitable for reuse by RESPONSIBLE PARTY or others on any other project. RESPONSIBLE PARTY may rely on and continue to use and reuse the documents provided by the ENVIRONMENTAL CONSULTANT for all subsequent work on this remediation project. Any reuse on another project without written verification or adaptation by ENVIRONMENTAL CONSULTANT for the specific purpose intended will be at RESPONSIBLE PARTY's sole risk and without liability or legal exposure to ENVIRONMENTAL CONSULTANT and RESPONSIBLE PARTY shall indemnify and hold harmless ENVIRONMENTAL CONSULTANT, and its Subcontractors, from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENVIRONMENTAL CONSULTANT to further

compensation at rates to be agreed upon by RESPONSIBLE PARTY and ENVIRONMENTAL CONSULTANT.

10. **AVAILABILITY OF LANDS; DIFFERING SITE CONDITIONS;
REFERENCE POINTS; HAZARDOUS CONDITIONS.**

10.01 Availability of Lands

A. RESPONSIBLE PARTY shall furnish, as indicated in the Contract Documents, the lands upon which the Remedial Activities are to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of ENVIRONMENTAL CONSULTANT.

B. ENVIRONMENTAL CONSULTANT will commence and complete remedial activities in a manner to minimize interference with current operations. ENVIRONMENTAL CONSULTANT will use reasonable efforts to avoid interference with the business use and operation of the property. The ENVIRONMENTAL CONSULTANT shall not be responsible for any loss of business, anticipated profits, revenue, or other economic loss arising out of ENVIRONMENTAL CONSULTANT's presence on the property during remediation, except arising out of ENVIRONMENTAL CONSULTANT's negligence.

C. Upon reasonable written request, RESPONSIBLE PARTY shall furnish ENVIRONMENTAL CONSULTANT with a correct statement of record legal title and legal description of the lands upon which the remediation is to be performed and RESPONSIBLE PARTY's interest therein as necessary for giving notice of or filing a lien, deed affidavit or deed restriction against such lands in accordance with applicable Laws and Regulations. RESPONSIBLE PARTY shall identify any encumbrances or restrictions not of general application but specifically related to use of lands so furnished with which ENVIRONMENTAL CONSULTANT will have to comply in performing the Remedial Activities. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by RESPONSIBLE PARTY, unless otherwise provided in the Contract Documents. If ENVIRONMENTAL CONSULTANT and RESPONSIBLE PARTY are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in RESPONSIBLE PARTY's furnishing these lands, rights-of-way or easements, ENVIRONMENTAL CONSULTANT may make a claim therefor as provided herein.

10.02 Differing Site Conditions

A. ENVIRONMENTAL CONSULTANT shall promptly, and before the conditions are disturbed or further disturbed, give a written notice to RESPONSIBLE PARTY and Department of Commerce of (i) subsurface or latent physical conditions at the Site which differ materially from those indicated in the Contract Documents, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character called for by the Contract Documents, or

(iii) contamination materially different from that described in the site investigation report or other environmental documents provided as part of the Department of Commerce's bid process.

B. ENVIRONMENTAL CONSULTANT will describe in writing the site conditions promptly to the RESPONSIBLE PARTY and the Department of Commerce. If a material difference is identified, that could serve to increase otherwise eligible PECFA costs, the Department of Commerce will provide a decision as to whether the discovery is material and whether it could have been known or should have been known from the site investigation or other environmental documents provided as part of the Bid process. If the conditions are determined to materially so differ and cause an increase in the total cost to COMPLETION an equitable adjustment shall be made under this clause subject to the approval of the Department of Commerce; or the Department of Commerce may require as a condition of reimbursement that the Contract be terminated and the Remedial Activities be re-bid.

C. No request by ENVIRONMENTAL CONSULTANT for an equitable adjustment under paragraph 10.02 shall be allowed unless ENVIRONMENTAL CONSULTANT has given the written notice required; provided that the time prescribed for giving written notice may be extended by RESPONSIBLE PARTY and no additional costs associated with the equitable adjustment of differing site conditions have been incurred before the written notice.

10.03 Hazardous Conditions Not Identified In or By the Contract Documents.

A. RESPONSIBLE PARTY will be responsible for any Hazardous Condition encountered at the Site which was not identified in the Contract Documents to be within the scope of the Remedial Activities. RESPONSIBLE PARTY shall not be responsible for materials creating a Hazardous Condition brought to the Site by ENVIRONMENTAL CONSULTANT, Subcontractors, Supplier or anyone else for whom ENVIRONMENTAL CONSULTANT is responsible.

B. ENVIRONMENTAL CONSULTANT and any affected Subcontractor shall immediately (i) stop all Remedial Activities in connection with such Hazardous Condition not anticipated by the Contract Documents and in any area affected thereby, and (ii) notify RESPONSIBLE PARTY and the Department of Commerce (and thereafter confirm such notice in writing). RESPONSIBLE PARTY shall promptly determine the necessity of retaining a qualified expert to evaluate such Hazardous Condition or take corrective action, if any or negotiate with ENVIRONMENTAL CONSULTANT to execute a Change Order to take corrective action. ENVIRONMENTAL CONSULTANT shall not be required to resume Remedial Activities in connection with such Hazardous Condition or in any such affected area until after RESPONSIBLE PARTY has obtained any required permits related thereto and delivered to ENVIRONMENTAL CONSULTANT special written notice (i) specifying that such Hazardous Condition and any affected area is or has been rendered safe for the resumption of Remedial Activities, or (ii) specifying any special conditions under which such Remedial Activities may be resumed safely.

C. If after receipt of such special written notice ENVIRONMENTAL CONSULTANT does not agree to resume Remedial Activities based on a reasonable belief it is

unsafe, or does not agree to resume such Remedial Activities under such special conditions, then RESPONSIBLE PARTY may order such portion of the Remedial Activities that are related to such hazardous condition or in such affected area to be deleted from the Remedial Activities. If RESPONSIBLE PARTY and ENVIRONMENTAL CONSULTANT cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price as a result of deleting such portion of the Remedial Activities, then either party may make a claim therefor as provided in paragraph 19.02. RESPONSIBLE PARTY shall obtain another qualified environmental consultant to perform the deleted portion of the Remedial Activities.

11. **INSURANCE.**

11.01 ENVIRONMENTAL CONSULTANT's Liability Insurance

A. ENVIRONMENTAL CONSULTANT shall at its own sole cost and expense, purchase and maintain and promptly pay when due all premiums for such Comprehensive or Commercial General Liability insurance with contractor's pollution endorsement; Professional Errors and Omissions insurance with pollution endorsement as required by the PECFA Program; Automobile Liability insurance; Worker's Compensation insurance in amounts no less than listed below, and as will provide protection from claims which may arise out of or result from ENVIRONMENTAL CONSULTANT's or its Subcontractor's performance and furnishing of the Remedial Activities including but not limited to investigation, design, construction, start up, operation, close out and Completion.

B. The policies of insurance required by paragraph 11 shall provide the following:

1. Comprehensive or Commercial General Liability insurance providing bodily injury, including death, personal injury and property damage coverage with a combined single limit of at least \$1,000,000 each occurrence or claim and a general aggregate limit of at least \$1,000,000. This insurance shall provide Broad Form Contractual Liability covering the ENVIRONMENTAL CONSULTANT's indemnity provisions contained in this Agreement. Underground hazard, Products-Completed Operations with products-completed operation aggregate of at least \$1,000,000 with pollution coverage on the completed operations coverage, a separate general aggregate for the project (ISO Form CG 25 03 or equivalent), Broad Form Property Damage, severability of interests and name the RESPONSIBLE PARTY as an additional insured with respect to all liabilities arising out of the ENVIRONMENTAL CONSULTANT's obligation to the RESPONSIBLE PARTY in the Agreement. If claims made insurance is purchased and not renewed as required, under this contract, the ENVIRONMENTAL CONSULTANT will purchase a 1 (one) year extended reporting period endorsement for each of the claims made policies.

2. Automobile Public Liability insurance providing bodily injury and property damage with a combined single limit of at least \$1,000,000 each occurrence or claim. This insurance shall provide contractual liability by endorsement concerning all motor vehicles including hired and non-owned, mobile equipment to the extent it may be excluded from general liability insurance, severability of interests and name The RESPONSIBLE PARTY as an

additional insured with respect to all liabilities arising out of ENVIRONMENTAL CONSULTANT's obligation to The RESPONSIBLE PARTY in the Agreement.

3. Professional Errors & Omissions insurance with a Pollution Liability endorsement covering errors & omissions and pollution, occurring in association with the Work conducted pursuant to the Agreement, of at least \$1,000,000 each claim and \$1,000,000 total for all claims.

4. Worker's Compensation insurance covering the statutory liability as determined by the compensation laws of the state(s) affected by this Agreement and Employers' Liability. Also compliance with all laws of states which require participation in their state workers compensation fund.

5. With respect to occurrence basis policies, the policy shall remain in effect at least until final payment and at all times thereafter when ENVIRONMENTAL CONSULTANT may be correcting, removing or replacing defective Construction;

6. With respect to completed operations insurance, and any other insurance coverage written on a claims-made basis, remain in effect for at least one year after final payment (and ENVIRONMENTAL CONSULTANT shall furnish RESPONSIBLE PARTY and each other additional insured indicated herein to whom a certificate of insurance has been issued evidence satisfactory to RESPONSIBLE PARTY and any such additional insured of continuation of such insurance at final payment and one year thereafter).

C. The ENVIRONMENTAL CONSULTANT hereby waives its right to subrogation as respect the above insurance policy(ies). ENVIRONMENTAL CONSULTANT's insurance shall be primary with respect to any insurance carried by the RESPONSIBLE PARTY except for a Builder's All Risk policy.

D. With respect to insurance required exclusive of Worker's Compensation and Professional Errors and Omissions insurance, include RESPONSIBLE PARTY as additional insured(s) including coverage for the respective officers and employees of all such additional insureds;

E. Include at least the specific coverages and be written for not less than the statutory limits of liability provided herein or required by Laws or Regulations, whichever is greater;

F. ENVIRONMENTAL CONSULTANT shall furnish to the RESPONSIBLE PARTY certificate(s) of insurance evidencing the required coverage and endorsement(s) and upon request a certified duplicate original of any of those policies. The insurance company(ies) insuring such policy(ies) shall notify the RESPONSIBLE PARTY in writing of any material alteration including any change in the retroactive date in any "claims-made" policies or substantial reduction of aggregate limits, if such limits apply, or cancellation thereof at least thirty (30) days prior thereto.

G. The insurance policy(ies) shall be written by an insurance company or companies acceptable to The RESPONSIBLE PARTY or with a current Best's Insurance Guide Rating of A and Class VII or better. Such insurance company shall be authorized to transact business in the State of Wisconsin.

11.02 RESPONSIBLE PARTY's Liability Insurance

A. In addition to the insurance required to be provided by ENVIRONMENTAL CONSULTANT under paragraph 5.02, RESPONSIBLE PARTY, at RESPONSIBLE PARTY's option, may purchase and maintain at RESPONSIBLE PARTY's expense RESPONSIBLE PARTY's own liability insurance as will protect RESPONSIBLE PARTY against claims which may arise from operations under the Contract Documents.

11.03 Property Insurance

A. RESPONSIBLE PARTY shall purchase and maintain property insurance upon the physical structures and personal property associated with the remedial activities at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be required by Laws and Regulations). This insurance will:

1. Include the interests of RESPONSIBLE PARTY, ENVIRONMENTAL CONSULTANT, Subcontractors, and any other persons or entities who are deemed to have an insurable interest and are listed as an insured or additional insured;

2. Be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss and damage to the remedial equipment, materials, temporary buildings, falsework and all materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils or causes of loss as may be specifically required by the Agreement;

3. Include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. Cover materials and equipment stored at the Site or at another location that was agreed to in writing by RESPONSIBLE PARTY prior to being incorporated in the Remedial Activities, provided that such materials and equipment have been included in an Application for Payment approved by RESPONSIBLE PARTY;

5. Be maintained in effect until final payment is made unless otherwise agreed to in writing by RESPONSIBLE PARTY and ENVIRONMENTAL CONSULTANT with thirty days written notice to each other additional insured to whom a certificate of insurance has been issued; and

6. Allow partial utilization of the project site by the RESPONSIBLE PARTY.

B. RESPONSIBLE PARTY shall not be responsible for purchasing and maintaining any property insurance to protect the interests of ENVIRONMENTAL CONSULTANT, Subcontractors, Suppliers, Engineers or others in the conduct of the Remedial Activities.

12. **ENVIRONMENTAL CONSULTANT'S RESPONSIBILITIES.**

12.01 Design, Hydrology, Hydrogeologic, Engineering, Geotechnical Professional Services (herein collectively referred to as "Professional Services")

A. *Standard of Care:* ENVIRONMENTAL CONSULTANT shall perform or furnish Professional Services and related services in all phases of the Remedial Activities. The standard of care for all such services performed or furnished under this Agreement will be the care and skill ordinarily used by members of the profession practicing under similar conditions at the same time and locality. ENVIRONMENTAL CONSULTANT cannot be liable for having failed to recommend or use any innovative or experimental technology or techniques that are not yet commonly used in similar situations. Because of the possibility of Differing Conditions as defined in paragraphs 10.02 or 10.03, the ENVIRONMENTAL CONSULTANT can not guarantee that the plan and design will remediate all petroleum contamination and agrees only to use the professional standard of care in the remediation process.

12.02 Supervision and Superintendence of Remedial Activities

A. ENVIRONMENTAL CONSULTANT shall identify a specific supervising professional who will supervise, inspect and direct the Remedial Activities competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the Remedial Activities in accordance with the Contract Documents. ENVIRONMENTAL CONSULTANT and the designated supervising professional shall be solely responsible for the means, methods, techniques, sequences and procedures employed for the provision of Remedial Activities. ENVIRONMENTAL CONSULTANT and supervising professional shall be responsible to see that the completed Remedial Activities complies with the Contract Documents and meets the COMPLETION criteria and shall keep RESPONSIBLE PARTY advised as to the quality and progress of the Remedial Activities.

B. ENVIRONMENTAL CONSULTANT shall have available at all times during the Remedial Activities a designated supervising professional, who shall not be replaced without written notice to RESPONSIBLE PARTY except under extraordinary circumstances. The ENVIRONMENTAL CONSULTANT's representative shall have authority to

act on behalf of ENVIRONMENTAL CONSULTANT. All communications to the representative shall be as binding as if given to ENVIRONMENTAL CONSULTANT.

C. The supervising professional designated by ENVIRONMENTAL CONSULTANT shall meet all applicable training, experience, and certification or licensure requirements of the Department of Commerce.

12.03 Labor, Materials and Equipment

A. ENVIRONMENTAL CONSULTANT shall provide competent, suitably qualified personnel to survey, lay out, and perform the Remedial Activities as required by the Contract Documents. ENVIRONMENTAL CONSULTANT through the designated supervising professional shall at all times maintain good discipline and order at the Site.

B. Unless otherwise specified in the Contract Documents, ENVIRONMENTAL CONSULTANT shall furnish or cause to be furnished and assume full responsibility for materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Remedial Activities directly performed under this contract by the ENVIRONMENTAL CONSULTANT.

C. All materials and equipment incorporated into the Remedial Activities that are furnished by the ENVIRONMENTAL CONSULTANT shall be of good quality. All warranties and guaranties specifically called for by the Contract Documents shall expressly run to the benefit of RESPONSIBLE PARTY. If required by RESPONSIBLE PARTY, ENVIRONMENTAL CONSULTANT shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

12.04 Concerning Subcontractors, Suppliers and Others

A. ENVIRONMENTAL CONSULTANT shall be fully responsible to RESPONSIBLE PARTY for all acts and omissions of the Subcontractors, Suppliers and other individuals or entities performing or furnishing any of the Work under a direct contract with ENVIRONMENTAL CONSULTANT. The ENVIRONMENTAL CONSULTANT shall not be responsible for means, methods, techniques, procedures or safety programs in connection with work not under direct contract with the ENVIRONMENTAL CONSULTANT.

12.05 Patent Fees and Royalties

A. ENVIRONMENTAL CONSULTANT shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Remedial Activities or the incorporation in the Remedial Activities of any invention, design, process, product or device

which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Remedial Activities and if to the actual knowledge of RESPONSIBLE PARTY its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by RESPONSIBLE PARTY in the Contract Documents. To the fullest extent permitted by Laws and Regulations, ENVIRONMENTAL CONSULTANT shall indemnify and hold harmless RESPONSIBLE PARTY, from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Remedial Activities or resulting from the incorporation in the Remedial Activities of any invention, design, process, product or device not specified in the Conceptual Documents.

12.06 Permits

A. Unless otherwise provided in the Contract Documents, ENVIRONMENTAL CONSULTANT shall directly or through one or more Subcontractors obtain and pay for all necessary permits and licenses. RESPONSIBLE PARTY shall assist ENVIRONMENTAL CONSULTANT, when necessary, in obtaining such permits and licenses necessary for the remedial activities. RESPONSIBLE PARTY shall pay all other governmental charges, access fees, and inspection fees necessary for the Remedial Activities.

12.07 Laws and Regulations

A. ENVIRONMENTAL CONSULTANT shall give all notices and comply with all Laws and Regulations of the place of the Project which are applicable to furnishing and performance of the Remedial Activities. Except where otherwise expressly required by applicable Laws and Regulations, RESPONSIBLE PARTY shall not be responsible for monitoring ENVIRONMENTAL CONSULTANT's compliance with any Laws or Regulations.

B. If ENVIRONMENTAL CONSULTANT performs any Remedial Activities knowing or having reason to know that it is contrary to Laws or Regulations, ENVIRONMENTAL CONSULTANT shall bear all costs arising therefrom.

C. Changes in Laws and Regulations not known or foreseeable on the date of receipt of Proposals having an effect on the cost or time of performance may be the subject of a claim under this Agreement.

12.08 Taxes

A. ENVIRONMENTAL CONSULTANT shall pay all sales, consumer, use, gross receipts and other similar taxes required to be paid by ENVIRONMENTAL CONSULTANT in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Remedial Activities.

12.09 Use of Site and Other Areas

A. For services contracted for by the RESPONSIBLE PARTY under this agreement the following provisions are included.

1. Service provider shall confine construction equipment, the storage of materials and equipment and the operations of construction and workers to those lands and areas permitted by the RESPONSIBLE PARTY and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Service provider shall assume full responsibility for any damage to any such land or area, or to the responsible party or occupant thereof or of any adjacent land or areas, resulting from the performance of the contracted activities. Should any claim be made by any such responsible party or occupant because of the performance of the contracted activities, service provider shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

2. During the performance of the contract activities, service provider shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Remedial Activities. At the completion of the contract activities, service provider shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment, temporary construction and machinery, surplus materials and properly close all monitoring wells.

3. Service provider shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall service provider subject any part of the property or adjacent property to stresses or pressures that will endanger it.

B. RESPONSIBLE PARTY shall include the provisions contained in 12.09 A1, A2, and A3, in any contract for services related to the effort to remediate contamination originating from the source property that is the subject of this agreement.

12.10 Record Documents

A. ENVIRONMENTAL CONSULTANT shall provide to the RESPONSIBLE PARTY, during the course of this contract, one copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Field Orders and Work Change Directives, in good order and annotated to show all changes made during the conduct of the Remedial Activities.

12.11 Safety and Protection

A. ENVIRONMENTAL CONSULTANT shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Remedial Activities contracted for by the ENVIRONMENTAL CONSULTANT under the

provisions of this agreement. ENVIRONMENTAL CONSULTANT shall take all reasonable and appropriate precautions for the safety of, and shall provide reasonable and necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Remedial Activities;
2. all work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto.

B. ENVIRONMENTAL CONSULTANT shall comply with applicable Laws and Regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain or shall require the erection and maintenance of all reasonable and appropriate safeguards for such safety and protection. ENVIRONMENTAL CONSULTANT shall notify RESPONSIBLE PARTY, owners of adjacent property and of underground facilities and utility owners when prosecution of the Remedial Activities may affect them, and shall cooperate or provide for the cooperation with them in the protection, removal, relocation and replacement of their property. Damage, injury or loss to any property negligently caused, directly or indirectly, in whole or in part, by ENVIRONMENTAL CONSULTANT or any other individual or entity directly employed by ENVIRONMENTAL CONSULTANT shall be remedied by ENVIRONMENTAL CONSULTANT. ENVIRONMENTAL CONSULTANT's duties and responsibilities for safety and for protection of the property shall continue until such time as all the Remedial Activities are completed and the appropriate governmental agency has issued a notice to RESPONSIBLE PARTY that the Site meets or is able to meet the Completion criteria in 2.01.

12.12 Hazard Communication Programs

A. ENVIRONMENTAL CONSULTANT shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

12.13 Emergencies

A. In emergencies affecting the safety or protection of persons or the Remedial Activities or property at the Site or adjacent thereto, ENVIRONMENTAL CONSULTANT, without special instruction or authorization from RESPONSIBLE PARTY, is obligated to act to prevent threatened damage, injury or loss. ENVIRONMENTAL CONSULTANT shall give RESPONSIBLE PARTY prompt written notice if ENVIRONMENTAL CONSULTANT believes that any significant changes in the Remedial Activities or variations from the Contract Documents have been caused thereby. If a change in the Contract Documents is

required because of the action taken by ENVIRONMENTAL CONSULTANT in response to such an emergency, a Change Order will be issued to document the consequences of such action.

12.14 ENVIRONMENTAL CONSULTANT's General Warranty and Guarantee

A. ENVIRONMENTAL CONSULTANT warrants and guarantees to RESPONSIBLE PARTY that all Remedial Activities will be in accordance with the Contract Documents and will not be defective. ENVIRONMENTAL CONSULTANT's warranty and guarantee hereunder excludes defects or damage caused by:

1. Abuse, modification or improper maintenance or operation by persons other than ENVIRONMENTAL CONSULTANT or individuals directly employed by the ENVIRONMENTAL CONSULTANT; or

2. Normal wear and tear under normal usage.

B. ENVIRONMENTAL CONSULTANT's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Remedial Activities that is not in accordance with the Contract Documents or a release of ENVIRONMENTAL CONSULTANT's obligation to perform the Remedial Activities in accordance with the Contract Documents and contracted dollar amount:

1. Observations by RESPONSIBLE PARTY;

2. The making of any progress or final payment;

3. Any acceptance by RESPONSIBLE PARTY or any failure to do so;

4. Any review and approval of a Submittal;

5. Any inspection, test or approval by others; or

6. Any correction of defective Remedial Activities.

12.15 Indemnification

A. ENVIRONMENTAL CONSULTANT shall indemnify and hold harmless RESPONSIBLE PARTY's, officers, directors, employees, agents and consultants from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from the performance of Remedial Activities, provided that any such claim, cost, loss or damage is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent such claim, cost or damage is caused by any negligent act or omission of

ENVIRONMENTAL CONSULTANT or entity directly employed by the ENVIRONMENTAL CONSULTANT to perform or furnish any of the Remedial Activities.

B. In any and all claims against RESPONSIBLE PARTY or any of their respective consultants, agents, officers, directors or employees by any employee (or the survivor or personal representative of such employee) of ENVIRONMENTAL CONSULTANT or an entity directly employed by the ENVIRONMENTAL CONSULTANT to perform or furnish any of the Remedial Activities, the indemnification obligation of ENVIRONMENTAL CONSULTANT shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for ENVIRONMENTAL CONSULTANT under workers' compensation acts, disability benefit acts or other employee benefit acts.

C. The indemnification obligations of ENVIRONMENTAL CONSULTANT shall not extend to the liability of RESPONSIBLE PARTY's consultants, officers, directors, employees or agents arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, designs, or specifications.

13. **RESPONSIBLE PARTY'S RESPONSIBILITIES.**

13.01 General

A. RESPONSIBLE PARTY shall do the following in a timely manner so as not to delay the services of ENVIRONMENTAL CONSULTANT.

1. Designate in writing a person to act as RESPONSIBLE PARTY's Representative with respect to the services to be rendered under this Agreement.

2. Provide such legal services as RESPONSIBLE PARTY may require with regard to legal issues pertaining to the Remedial Activities.

3. Furnish reasonable evidence satisfactory to ENVIRONMENTAL CONSULTANT, that sufficient funds are available and committed for the entire cost of the Remedial Activities. Unless such reasonable evidence is furnished, ENVIRONMENTAL CONSULTANT is not required to commence or continue any Remedial Activities, or may, if such evidence is not presented within a reasonable time, stop Remedial Activities upon 5 days notice to the RESPONSIBLE PARTY.

4. Make payments to ENVIRONMENTAL CONSULTANT promptly when they are due.

5. Promptly furnish lands and easements as reasonably required for the ENVIRONMENTAL CONSULTANT to conduct the Remedial Activities.

6. Furnish to ENVIRONMENTAL CONSULTANT, as required for performance of ENVIRONMENTAL CONSULTANT's services the following, all of which ENVIRONMENTAL CONSULTANT may use and rely upon in performing services under this Agreement:

- a. Property, boundary, easement, and right-of-way surveys;
- b. Property descriptions;
- c. Zoning, deed and other land use restrictions;
- d. Provide copies of all relevant correspondence from governmental agencies to ENVIRONMENTAL CONSULTANT;
- e. Assistance in filing documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Remedial Activities and the Site;
- f. Subsurface data used in preparation of the Site investigation.

7. Review submittals from ENVIRONMENTAL CONSULTANT.

8. Provide information known to or in the possession of RESPONSIBLE PARTY relating to the presence of materials and substances at the Site which could create a hazardous condition and the location of buried utilities and structures on the property.

B. RESPONSIBLE PARTY's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in paragraphs 11.02 and 11.03.

13.02 Scope of RESPONSIBLE PARTY's Safety and Hazardous Waste Responsibilities

A. The RESPONSIBLE PARTY shall not supervise, direct or have control or authority over, nor be responsible for, ENVIRONMENTAL CONSULTANT's means, methods, techniques, sequences or procedures of conduct of the Remedial Activities or the safety precautions and programs incident thereto, or for any failure of ENVIRONMENTAL CONSULTANT to comply with Laws and Regulations applicable to the furnishing or performance of the Remedial Activities. RESPONSIBLE PARTY will not be responsible for ENVIRONMENTAL CONSULTANT's failure to perform the Remedial Activities in accordance with the Contract Documents.

B. RESPONSIBLE PARTY's responsibility in respect of undisclosed Asbestos, PCBs, Hazardous Waste Or Radioactive Materials uncovered or revealed at the Site is set forth in paragraph 10.03.

14. **CHANGES IN WORK.**

14.01 General—Rights and Obligations

A. Without invalidating the Agreement, RESPONSIBLE PARTY or ENVIRONMENTAL CONSULTANT may, at any time or from time to time, request additions, deletions or revisions in the work within the general scope of the contract by a written Change Order. All requests must be in writing and be agreed to by both the RESPONSIBLE PARTY and ENVIRONMENTAL CONSULTANT both with regard to the scope of work and the Contract Price adjustment and follow the procedure established in 3.01.

B. ENVIRONMENTAL CONSULTANT shall not be entitled to an increase in the Contract Price with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided for herein, except in the case of an emergency.

14.02 Execution of Change Orders

A. RESPONSIBLE PARTY and ENVIRONMENTAL CONSULTANT shall execute appropriate written Change Orders for changes in the Remedial Activities or other work which is agreed to by the parties and changes in the Contract Price which are agreed to by the parties. All change orders shall be documented according to 3.01.

15. **TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE CONSTRUCTION.**

15.01 Notice of Defects

A. Prompt written notice of all defective Remedial Activities of which RESPONSIBLE PARTY has actual knowledge will be given to ENVIRONMENTAL CONSULTANT by RESPONSIBLE PARTY. All defective Remedial Activities may be rejected, corrected or accepted as provided herein.

15.02 Access

A. RESPONSIBLE PARTY, RESPONSIBLE PARTY's consultants, other representatives and personnel of RESPONSIBLE PARTY, independent testing laboratories and governmental agencies with jurisdictional interests will have access at reasonable times for their observation, inspection and testing. ENVIRONMENTAL CONSULTANT shall provide them access and advise them of the availability of the ENVIRONMENTAL CONSULTANT's site safety plan, as required by applicable Federal Law, and make available a copy if requested.

15.03 Tests and Inspections

A. If the Contract Documents or Laws or Regulations of any public body having jurisdiction require any part of the Remedial Activities specifically to be inspected, tested or approved, ENVIRONMENTAL CONSULTANT shall assume full responsibility for arranging and obtaining such inspections, tests or approvals in connection therewith, and furnish RESPONSIBLE PARTY the required certificates of inspection or approval.

B. ENVIRONMENTAL CONSULTANT shall give RESPONSIBLE PARTY reasonable notice of the planned schedule for all required inspections, tests or approvals.

15.04 RESPONSIBLE PARTY May Stop the Remedial Activities

A. If the Remedial Activities are defective, or ENVIRONMENTAL CONSULTANT fails to supply sufficient skilled workers or suitable materials or equipment or fails to furnish or perform the Remedial Activities in such a way that the completed Remedial Activity will conform to the Contract Documents and achieve the completion objective, RESPONSIBLE PARTY may, in writing, order ENVIRONMENTAL CONSULTANT to stop the Remedial Activity or any portion thereof, until the cause for such order has been eliminated; however, this right of RESPONSIBLE PARTY to stop Remedial Activities will not give rise to any duty on the part of RESPONSIBLE PARTY to exercise this right for the benefit of ENVIRONMENTAL CONSULTANT or any other party.

16. **PAYMENTS.**

16.01 Application for Progress Payment

A. ENVIRONMENTAL CONSULTANT shall submit to RESPONSIBLE PARTY for review an Application for Payment filled out and signed by ENVIRONMENTAL CONSULTANT supervising professional covering the work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Department of Commerce PECFA statutes and administrative regulations. If payment is requested on the basis of materials and equipment not incorporated in the work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that RESPONSIBLE PARTY has received the materials and equipment free and clear of all Liens.

16.02 ENVIRONMENTAL CONSULTANT's & LIEN WAIVER(S)

A. ENVIRONMENTAL CONSULTANT warrants and guarantees that title to all Remedial Activity materials and equipment provided directly by the ENVIRONMENTAL CONSULTANT will pass to RESPONSIBLE PARTY no later than the time of payment, free and clear of all Liens.

16.03 Progress Payments

A. Progress payments shall be made by the RESPONSIBLE PARTY to the ENVIRONMENTAL CONSULTANT according to the following procedure:

1. RESPONSIBLE PARTY will, within fifteen (15) days of receipt of each Application for Payment, either process the payment, or return the Application to ENVIRONMENTAL CONSULTANT indicating in writing its reasons for refusing to accept the Application. Not more than twenty (20) days after accepting such Application the amount will become due and when due will be paid by RESPONSIBLE PARTY to ENVIRONMENTAL CONSULTANT.

2. If the RESPONSIBLE PARTY should fail to pay the ENVIRONMENTAL CONSULTANT at the time the payment of any amount becomes due, then ENVIRONMENTAL CONSULTANT may, at any time thereafter, upon serving written notice that he will stop the Work within seven days after receipt of the notice by the RESPONSIBLE PARTY, and after such seven day period, stop the Work until payment of the amount owing has been received. Written notice shall be deemed to have been duly served if sent to the last known business address of the RESPONSIBLE PARTY.

3. Payments due but unpaid shall bear interest at the rate specified in this Agreement.

4. No Progress Payment shall constitute an acceptance of any work not in accordance with the Contract Documents.

B. RESPONSIBLE PARTY may refuse to make the whole or any part of any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any previous payment, to the extent that is reasonably necessary to protect RESPONSIBLE PARTY from loss because:

1. The work is defective, or completed Remedial Activities require correction or replacement; or

2. The Contract Price has been reduced by Change Order.

17. **SUSPENSION OF REMEDIAL ACTIVITIES AND TERMINATION.**

17.01 RESPONSIBLE PARTY May Terminate for Cause

A. The occurrence of any one or more of the following events justifies termination for cause:

1. ENVIRONMENTAL CONSULTANT persistently fails to perform the Remedial Activities in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment).

2. ENVIRONMENTAL CONSULTANT disregards Laws or Regulations of any public body having jurisdiction.

3. ENVIRONMENTAL CONSULTANT otherwise violates in any substantial way any provisions of the Contract Documents.

B. RESPONSIBLE PARTY may, after giving ENVIRONMENTAL CONSULTANT and the Department of Commerce fourteen (14) days' written notice, and provided ENVIRONMENTAL CONSULTANT does not remedy such failure to perform, disregard of Laws or Regulations or substantial violation of the provisions of the Contract Documents, terminate the services of ENVIRONMENTAL CONSULTANT, exclude ENVIRONMENTAL CONSULTANT from the Site and take possession of the Remedial Activities and of all equipment at the Site which has been paid for by RESPONSIBLE PARTY and use the same to the full extent they could be used by ENVIRONMENTAL CONSULTANT (without liability to ENVIRONMENTAL CONSULTANT for trespass or conversion), and finish the Remedial Activities as RESPONSIBLE PARTY may deem expedient. Upon termination, the RESPONSIBLE PARTY's liability under this agreement shall be established following the provisions established in paragraph 17.03.

C. Where ENVIRONMENTAL CONSULTANT's services have been terminated by RESPONSIBLE PARTY, the termination will not affect any rights or remedies of RESPONSIBLE PARTY against ENVIRONMENTAL CONSULTANT then existing or which may thereafter accrue. Any retention or payment of moneys due ENVIRONMENTAL CONSULTANT by RESPONSIBLE PARTY will not release ENVIRONMENTAL CONSULTANT from liability.

17.03 RESPONSIBLE PARTY May Terminate for Convenience

A. Upon fourteen (14) days' written notice to ENVIRONMENTAL CONSULTANT and the Department of Commerce, RESPONSIBLE PARTY may, without cause and without prejudice to any other right or remedy of RESPONSIBLE PARTY, elect to terminate the Agreement. In such case, ENVIRONMENTAL CONSULTANT shall be paid (without duplication of any items) for:

1. Completed and acceptable Remedial Activities executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for such work;

2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with the Remedial Activities;

3. Reasonable expenses directly attributable to termination.

B. ENVIRONMENTAL CONSULTANT shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

17.04 ENVIRONMENTAL CONSULTANT May Stop Work or Terminate

A. If, through no act or fault of ENVIRONMENTAL CONSULTANT, the Remedial Activities are suspended for a period of more than ninety days by RESPONSIBLE PARTY or under an order of court or other public authority, or RESPONSIBLE PARTY fails to act on any Application for Payment within thirty days after it is submitted or RESPONSIBLE PARTY fails for thirty days to pay ENVIRONMENTAL CONSULTANT any sum finally determined to be due, then ENVIRONMENTAL CONSULTANT may, upon fourteen (14) days' written notice to RESPONSIBLE PARTY and the Department of Commerce, and provided RESPONSIBLE PARTY does not remedy such suspension or failure within that time, terminate the Agreement and recover from RESPONSIBLE PARTY payment on the same terms as provided in paragraph 17.03 A. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if RESPONSIBLE PARTY has failed for thirty days to pay ENVIRONMENTAL CONSULTANT any sum finally determined to be due, ENVIRONMENTAL CONSULTANT may upon seven day's written notice to RESPONSIBLE PARTY and the Department of Commerce stop the Remedial Activities until payment is made of all such amounts due ENVIRONMENTAL CONSULTANT, including interest thereon. The provisions of this paragraph are not intended to preclude ENVIRONMENTAL CONSULTANT from making claim herein for an increase in Contract Price or otherwise for expenses or damage directly attributable to ENVIRONMENTAL CONSULTANT's stopping performance of the Remedial Activities as permitted by this paragraph.

18. **DISPUTE RESOLUTION.**

If and to the extent that RESPONSIBLE PARTY and ENVIRONMENTAL CONSULTANT have agreed on the method and procedure for resolving disputes between them that may arise under this Agreement, such dispute resolution method and procedure, if any, shall be as set forth in an Exhibit labeled, "Dispute Resolution Agreement", to be attached hereto and made a part hereof. If no such agreement on the method and procedure for resolving such disputes has been reached, RESPONSIBLE PARTY and ENVIRONMENTAL CONSULTANT may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

19. **MISCELLANEOUS.**

19.01 Giving Notice

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given.

1. If delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended;

2. If delivered at or sent by postage prepaid, to the last business address known to the giver of the notice; or

3. If transmitted by facsimile, the time at which a machine generated confirmation states the notice was received at the facsimile telephone number of the intended recipient last known by the sender.

19.02 Notice of Claim

A. Should RESPONSIBLE PARTY or ENVIRONMENTAL CONSULTANT suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

19.03 Cumulative Remedies

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, any general or specific warranties, guarantees and indemnities imposed upon ENVIRONMENTAL CONSULTANT and all of the rights and remedies available to RESPONSIBLE PARTY thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

19.04 Survival of Obligations

A. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Remedial Activities and achieving Completion under this Agreement.

19.05 Authorship

A. This agreement shall be construed to be authored by the RESPONSIBLE PARTY.

20. **DEFINED TERMS.**

A. Whenever used in these Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1. **Agreement:** The written contract between RESPONSIBLE PARTY and ENVIRONMENTAL CONSULTANT covering the Remedial Activities; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

2. **Application for Payment:** The form which is to be used by ENVIRONMENTAL CONSULTANT in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

3. **Change Order:** A written order which is signed by ENVIRONMENTAL CONSULTANT and RESPONSIBLE PARTY which authorizes an addition, deletion or revision in the Remedial Activities, and an adjustment in the Contract Price, issued on or after the Effective Date of the Agreement.

4. **Completion:** Achievement of the remediation outcome defined in the remediation bid provided to the Department of Commerce by the ENVIRONMENTAL CONSULTANT and including any proper abandonment activities.

5. **Construction:** The performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Remedial Activities and the furnishings of services (other than Design Professional Services) and documents, all as required by the Contract Documents.

6. **Construction Subagreement:** A written agreement between ENVIRONMENTAL CONSULTANT or a RESPONSIBLE PARTY and a construction contractor for provision or performance of Remedial Activities.

7. **Defective:** An adjective which when modifying the term Remedial Activities refers to the performance of Remedial Activities that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents.

8. **Design Professional Services:** Services related to the preparation of Drawings, Specifications, and designs specified by the Contract Documents and required to be performed by licensed design professionals, as well as services provided by or for licensed design professionals during Bidding/Negotiating, implementation of the Remedial Activities, Operational phases and submittal for regulatory site closure.

9. **Drawings:** Those portions of the Contract Documents prepared by or for ENVIRONMENTAL CONSULTANT consisting of drawings, diagrams,

illustrations, schedules and other data which show the scope, extent, and character of the Remedial Activities.

10. **Effective Date of the Agreement:** The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

11. **Engineer:** A duly licensed individual or entity designated by ENVIRONMENTAL CONSULTANT to perform or furnish specified Design Professional Services in connection with the Remedial Activities.

12. **ENVIRONMENTAL CONSULTANT:** The individual or entity that the RESPONSIBLE PARTY has entered into the Agreement with to obtain remedial project COMPLETION.

13. **Hazardous Waste:** The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903).

14. **Laws and Regulations; Laws or Regulations:** Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

15. **Liens:** Charges, security interests or encumbrances upon real property or personal property.

16. **PECFA:** The Petroleum Environmental Cleanup Fund Act as defined by Section 101.143 and 101.144 Wis. Stats. and COM 46 and 47 Wis. Administrative Code.

17. **RESPONSIBLE PARTY:** The public body, or authority, individual or entity with whom ENVIRONMENTAL CONSULTANT has entered into the Agreement and for whom the Remedial Activities are to be provided.

18. **Site:** Lands or other areas designated in the Contract Documents as being furnished by RESPONSIBLE PARTY for the performance of the Remedial Activities, storage, or access.

19. **Specifications:** Those portions of the Contract Documents prepared by or for ENVIRONMENTAL CONSULTANT and approved by RESPONSIBLE PARTY consisting of written technical descriptions of materials, equipment, construction systems, remediation systems, standards and workmanship as applied to the Remedial Activities and certain administrative details applicable thereto.

20. **Subcontractor:** An individual or entity other than a Supplier or Engineer having a direct contract with ENVIRONMENTAL CONSULTANT or

RESPONSIBLE PARTY or with any other Subcontractor for the performance of a part of the Remedial Activities.

21. **Submittal:** A written or graphic document prepared by or for ENVIRONMENTAL CONSULTANT which is required by the Contract Documents to be submitted to RESPONSIBLE PARTY by ENVIRONMENTAL CONSULTANT. Submittals may include Drawings, Specifications, progress schedules, shop drawings, samples, Cash Flow Projections, and Schedules of Values. Submittals other than Drawings and Specifications are not Contract Documents.

22. **Supplier:** A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with ENVIRONMENTAL CONSULTANT or with the RESPONSIBLE PARTY to furnish materials or equipment to be incorporated in the Remedial Activities by ENVIRONMENTAL CONSULTANT or any Subcontractor.